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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 10/618,332 | 07/11/2003 | Robert P. Julius | NPP 3.0-005 DIV CIP | 5274 |
| 530 | 7590 | 02/02/2006 | EXAMINER | |
| LERNER, DAVID, LITTENBERG, KRUMHOLZ & MENTLIK 600 SOUTH AVENUE WEST WESTFIELD, NJ 07090 | | | GEHMAN, BRYON P | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3728 | |

DATE MAILED: 02/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|-----------------|-------------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 10/618,332 | JULIUS, ROBERT P. | |
| | Examiner | Art Unit | |
| | Bryon P. Gehman | 3728 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 January 2006.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-37 is/are pending in the application.
- 4a) Of the above claim(s) 5-7 and 25-27 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 8-23 and 28-37 is/are rejected.
- 7) ☒ Claim(s) 24 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>5/31/05, 10/20/05</u> | 6) <input type="checkbox"/> Other: _____ |

1. Applicant's election without traverse of species XI in the paper filed January 3, 2006 is acknowledged.

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-4, 9, 12, 15, 17-19 and 32-35 are rejected under 35 U.S.C. 102(b) as being anticipated by Brown et al. (5,186,359). Claims 1-2, 4, 9, 12, 15, 17-19 and 32-35 are rejected under 35 U.S.C. 102(b) as being anticipated by Rutter (4,475,670). Each discloses a combination comprising a dispenser package (246 or 248; 30; respectively) including a sheet of material having an opening for dispensing therefrom and a cap assembly (250 or 252; 24) attached to the sheet of material and surrounding the opening, the cap assembly including a flange (see Figure 5; 34, see Figure 3), a holder (10; 20) including a front wall (94; including 22) having an interior face, an exterior face and an aperture (at 110; at 22), the dispenser package inserted into the holder so that a portion of the cap assembly passes through the aperture with the sheet of material opposing the interior face of the holder and the flange opposing the exterior face of the holder, wherein the flange includes a portion that extends beyond the aperture for preventing the flange from passing through the aperture when the dispenser package is inserted into the holder.

As to claims 2 and 33, the holder defines a rear wall (12; opposed to the front wall) defining an internal chamber receiving the dispenser package.

As to claims 3 and 34, Brown et al. disclose a flap (at 30) extending from an upper edge of the rear wall and securable with the front wall.

As to claims 4 and 35, each discloses side walls (138, 70; as shown).

As to claim 9, each discloses the front and rear walls integrally connected at lower ends of the respective blanks.

As to claim 12, each discloses the cap assembly attached to an exterior surface of the sheet material.

As to claim 15, each discloses the flange having a width greater than a width of the aperture.

As to claims 17-19, each discloses the sheet of material as flexible, composed of a permanently sealable material and collapsible.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-4, 8-12, 15, 17-19, 21 and 32-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kirkendall (4,812,054) in view of Rutter. Kirkendall discloses a combination comprising a dispenser package (disclosed beverage box) for wine

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including a sheet of material having an opening for dispensing therefrom and a cap assembly (38) attached to the sheet of material and surrounding the opening, the cap assembly including a flange (see Figure 2), a holder (8) including a front wall (18) having an interior face, an exterior face and an aperture (28), the dispenser package inserted into the holder so that a portion of the cap assembly passes through the aperture with the sheet of material opposing the interior face of the holder and the flange opposing the exterior face of the holder, wherein the flange includes a portion that extends beyond the aperture when the dispenser package is inserted into the holder. Rutter discloses a dispenser package for wine including a cap assembly provided with a flange including a portion that extends beyond the aperture for preventing the flange from passing through the aperture when the dispenser package is inserted into the holder. To modify the combination of Kirkendall employing the flange securing arrangement of Rutter would have been obvious in order the dispensing package within the holder in the manner suggested by Rutter.

As to claims 2 and 33, the holder of Kirkendall defines a rear wall (12) defining an internal chamber receiving the dispenser package.

As to claims 3 and 34, Kirkendall discloses a flap (14) extending from an upper edge of the rear wall and securable with the front wall.

As to claims 4, 8 and 35, Kirkendall discloses flexible side walls (10).

As to claims 9-11, Kirkendall discloses the front and rear walls integrally connected at lower ends of the holder and comprised of flexible cloth or fabric.

As to claim 12, Rutter discloses the cap assembly attached to an exterior surface of the sheet material.

As to claim 15, Rutter discloses the flange having a width greater than a width of the aperture.

As to claims 17-19, Rutter discloses the sheet of material as flexible, composed of a permanently sealable material and collapsible.

As to claim 21, Kirkendall discloses elastic straps (34).

6. Claims 13-14 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over the art including Rutter as applied to claim 12 above, and further in view of Stahley et al. (5,842,604). Stahley et al. disclose a cap assembly (at 38) including a hinged connection. To modify the cap assembly of Rutter to comprise a hinged cap would have obvious in order to provide a closure maintained to the cap assembly, as suggested by Stahley et al. .

7. Claims 28 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Novak (5,190,197) in view of French (5,127,545). Claims 28 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sussman et al. (4,735,317) in view of French. Novak and Sussman et al. each disclose a combination comprising a holder (12; 10) including a front wall (14; 2) having an aperture (22; 14) and a rear wall (16; 26) opposing the front wall, the front and rear walls defining an internal chamber, a dispenser package (23; 5) including a sheet of material having an opening (for

dispensing gloves from the dispenser package through aperture 22 while in the holder; 7) for dispensing at least one item from the dispenser package, the dispenser package inserted into the internal chamber to align the opening with the aperture, Novak including elastic straps (26 and 28). French discloses a holder (10) and dispenser package combination including an elastic strap (16) attached to the rear wall of the holder and comprising two sections releasably secured to one another by a hook and loop fastener ((16A, 16B). To modify the combination of either Novak or Sussman et al, employing elastic straps as disclosed by French would have been obvious in order to provide an easily securable mounting means to the mountable combination of either Novak or Sussman et al..

8. Claim 30 is rejected under 35 U.S.C. 103(a) as being unpatentable over the art as applied to claim 28 above, and further in view of Yamada (5,704,471). Yamada discloses a dispenser package including a cap assembly (2) attached to the sheet of material and including a flange (6). To modify the dispenser package of either one of Novak and Sussman et al. to comprise a cap assembly as disclosed by Yamada would have been obvious in order to provide a reclosable closure for the dispenser package.

9. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

10. Claims 1-2, 4, 9, 12, 15, 17-20 and 32-35 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 24, 25, 24, 1, 7, 17-20, 1, 24, 25 and 24, respectively, of U.S. Patent No. 6,431,360.

Although the conflicting claims are not identical, they are not patentably distinct from each other because the subject matter as claimed can be derived solely from the subject matter claimed in the earlier patent.

11. Claims 21-23, 28-31 and 36-37 are rejected on the ground of obviousness-type double patenting as being unpatentable over claim 24 of U.S. Patent No. 6,431,360 in view of Novak and French. Novak discloses two elastic straps (26, 28) attached to the rear wall of a holder to support the holder. French discloses an elastic strap (16) attached to the rear wall of the holder and comprising two sections releasably secured to one another by a hook and loop fastener ((16A, 16B). To modify the claimed combination of applicant's earlier patent as defined in claim 24 employing elastic straps as disclosed by Novak would have been obvious in order to provide an easily securable mounting means to the mountable combination. To modify the elastic straps of Novak in

the manner of French would have been obvious to facilitate opening of the straps and separation from a mounting surface, as suggested by French.

12. Claim 24 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bryon P. Gehman whose telephone number is (571) 272-4555. The examiner can normally be reached on Monday through Wednesday from 5:30am to 6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu, can be reached on (571) 272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

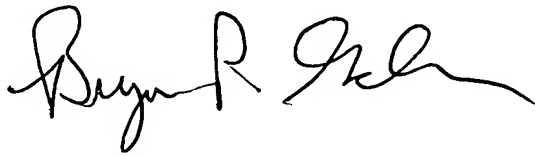
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you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "Bryon P. Gehman". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Bryon P. Gehman
Primary Examiner
Art Unit 3728

BPG